

**Before the
FEDERAL COMMUNICATIONS INDIANA COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for our Future)	WC Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform)	WT Docket No. 10-208
)	

**COMMENTS OF
THE INDIANA UTILITY REGULATORY COMMISSION**

I. Introduction

On November 18, 2011, the Federal Communications Commission (“FCC” or “Commission”) released its Report and Order and Further Notice of Proposed Rulemaking¹ (“Order” and “FNPRM”) regarding the Universal Service Fund (“USF”) and Intercarrier Compensation (“ICC”) in the above-referenced dockets. The FCC requested further details and

¹ Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service, Lifeline and Link-Up; Universal Service Reform --- Mobility Fund*, Release-Number FCC11-161, 2011 FCC LEXIS 4859 (Adopted Oct. 27, 2011; Released Nov. 18, 2011) (“Order” and “FNPRM”).

input from stakeholders such as state commissions and set a comment deadline of January 18, 2012, for Sections XVII.A-K. The Indiana Utility Regulatory Commission (“Indiana Commission”) hereby submits its Comments on the following aspects of the FNPRM:

- The need for data and analysis prior to establishing comparable rates and service levels for broadband service.
- A state commission review must occur prior to elimination of support for geographic areas with an unsubsidized competitor.
- In adjusting Eligible Telecommunications Carrier (“ETC”) service obligation, standards for voice telephony should not be relaxed.
- Prudent use of remedies or penalties to ensure accountability of recipients of USF support.

II. Comparable Rates and Service Levels for Broadband Service

In its Order, the FCC indicated that rural rates for broadband would be considered reasonably comparable for the purpose of compliance with Section 254(b) if they “fall within a reasonable range of urban rates for reasonably comparable broadband service.”² Having never examined the comparability of rates for broadband service, the FCC directed its staff to develop a specific methodology for defining that reasonable range.³ For use in developing a specific methodology, the FCC staff is empowered to conduct a survey of broadband rates to derive a national range of rates for broadband service.⁴ The FCC encouraged input from states and other stakeholders as what components should be included in the survey.⁵

In the FNPRM, the FCC seeks input on what components should be included in the survey.⁶ Specifically, the FCC asks how to collect and compare pricing data for mobile telephone service with landline service for both voice and broadband services.⁷ The FCC also asks about the comparability of various packages of mobile services with included minutes and

² *Id.* at *136, ¶ 113.

³ *Id.*

⁴ *Id.* at *137, ¶114.

⁵ *Id.*

⁶ *Id.* at *1268, ¶1018.

⁷ *Id.* at *1268-1271, ¶¶ 1019-1027.

text messaging and the comparability of fixed and mobile broadband services, even as these two types of services evolve over time.⁸

The Indiana Commission supports the establishment of a narrow range in which broadband rates will be considered reasonably comparable for compliance with Section 254(b). Rural customers should be afforded the same economic opportunities provided by broadband as urban dwellers and comparable rates are necessary to achieve that. However, the establishment of any reasonable comparable range standard for urban and rural rates for various types of broadband service should be determined only after data on current rates for broadband service in rural and urban areas has been collected and analyzed.

The distribution of current broadband rates and costs will prove valuable in understanding the appropriate range for the reasonable comparability standard for broadband rates charged by companies receiving support from the Connect American Fund (“CAF”). Indeed, analyzing the survey data of current broadband rates, in light of competition faced by the carriers charging those rates, and customers’ disposable income and elasticity of demand (i.e. extent that price changes affects amount of consumer demand) for broadband service would be helpful in establishing an appropriate reasonably comparable standard for broadband rates. For the purpose of establishing a reasonably comparable range of broadband rates for packages with multiple offerings, the Indiana Commission believes that the data collected should enable the determination of either: 1) the most popular rate/package; or 2) a weighted rate based on the median price of the packages.

Before any conclusions are reached or data analyzed, the data must be first collected. The Indiana Commission urges the FCC to collect data about not only broadband rates and costs but also the competitiveness of the market where those broadband rates are charged and the demand characteristics of customers who would purchase broadband.

III. Elimination of Support for Geographic Areas with an Unsubsidized Competitor

The Indiana Commission agrees that high-cost support should be expended prudently and only where support is required to provide affordable and reasonably comparable priced voice and broadband services. The FCC’s goal of maintaining a set budget for high-cost support and appropriately targeting that scarce financial support in a capped environment is reasonable but perhaps over-reaching. Additionally, the presence of an unsubsidized competitor can be evidence that high-cost support is not needed for a geographic area. Accordingly, the FCC proposal to eliminate USF support for carriers serving a geographic area that is entirely served by an unsubsidized competitor appears to be a prudent policy, but only if properly implemented. The Indiana Commission supports the FCC’s conclusion that it will phase out high-cost support

⁸ *Id.*

received by incumbent rate-of-return carriers over three years in study areas where an unsubsidized competitor, offering voice and broadband service that meets the FCC's performance obligations, serves 100 percent of all residential and business locations in the incumbent's study area.

The question to be answered in implementing such a policy is how much overlap must there be in the service area of carriers receiving support and of an unsubsidized competitor(s) to justify elimination of high-cost support.

Accuracy in determining the overlap of service territory is critical given that carriers' continued access to high-cost support will be dependent on these determinations. The Commission should guard against situations in which USF support could be lost by a carrier that has overlap by an unsubsidized competitor in a town or village but that same carrier is the sole carrier in the areas outlying that town or village in the "truly rural" portion of its total service area. Loss of support in these situations may impair the ability of that carrier to provide efficient service to outlying areas.

The Indiana Commission supports the FCC's suggestion that state commissions and other interested parties have the opportunity to provide comment on all final determinations of overlap greater than 75% before those determinations result in any loss of high-cost support. The Indiana Commission would encourage increasing the threshold of review from 75% to 80-85% to protect against the situation described above regarding areas adjacent to towns and villages. State commissions are uniquely positioned to provide insight into the geographic extent of service in their state. Given that the loss of support can have significant financial impacts on carriers and the customers they serve, the Indiana Commission recommends that state commissions must have the opportunity to provide a second review after the FCC has conducted its overlap analysis.

IV. Adjustments to ETC Service Obligations

The FCC seeks comment on appropriate adjustments to ETCs' existing service obligations as funding shifts to new and more targeted mechanisms.⁹ The goal is to appropriately match obligations and funding, while avoiding consumer disruption in access to communications services.¹⁰ While the Indiana Commission does not support moving funding away from vulnerable rural service areas, it provides these comments on the FCC's consideration to reduce ETC service obligations for carriers that have support eliminated.

⁹ *Id.* at *1326, ¶ 1089.

¹⁰ *Id.*

As a condition of receiving support, the Order requires ETCs to offer voice telephony as a stand-alone service throughout their designated service area.¹¹ ETCs may use virtually any technology in the provision of voice telephony service.¹² ETCs also must provide Lifeline service throughout their designated service area.¹³ The FNPRM requests comments on further modifying incumbent ETCs' obligations under Section 214(e)(1) to provide voice service in situations where the incumbent's high-cost universal service funding is eliminated, for example as a result of a competitive bidding process in which another ETC wins universal service support for an area and is subject to accompanying voice and broadband service obligations.¹⁴

We agree that, as ETCs lose federal support, they are likely to need more flexibility in order to continue to provide communications services. We are concerned that some of Indiana's small rural companies could be severely challenged, perhaps even bankrupted, by the shift in funding away from traditional high-cost service mechanisms. As a general rule, requiring continuation of mandated service in the face of diminishing financial support is not appropriate public policy. It is true that an ETC that wishes to be relieved from all or part of its ETC obligations has several procedural options today. It may redefine its service area, relinquish its ETC designation, or seek forbearance from federal requirements, but keep in mind that the forbearance process and service area redefinition process can take a prolonged period of time and are likely expensive for the carrier.

An ETC that wishes to continue receiving Lifeline/Link-up reimbursement must continue to provide voice telephony¹⁵ to its entire service territory and must offer that service on a standalone basis. If ETCs are relieved of obligations due to the absence of federal funding; they should be requested to surrender their ETC designation.

V. Ensuring Accountability of Recipients of USF Support

The Indiana Commission has always taken seriously its role to ensure accountability of recipients of federal and state funds. The Indiana Commission is already implementing many of the reporting and accountability requirements of the Order. In order to comply with 47 C.F.R 54.314 and to ensure that federal high-cost funds will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, the

¹¹ *Id.* at *93, ¶ 80.

¹² *Id.*

¹³ *Id.* at *93, ¶ 79.

¹⁴ *Id.* at *1331-1332, ¶ 1095.

¹⁵ *Id.* at *93, ¶ 80.

Indiana Commission has been collecting the information in 47 C.F.R. 54.209 (a)(1) through (a)(8) and other pertinent information for companies that receive high cost support.¹⁶

Because the supported services (under the past regulatory framework) could also be provided over the same fiber networks that provide broadband, ETCs often report on broadband deployment as well as the provision, maintenance and deployment of voices services.

The Indiana Commission has requested this information every July so commission staff may review it and the ETCs may be recertified by October 1st of each year. ETCs that receive high cost support in Indiana are rural incumbent local exchange carriers (“ILECs”) in most cases; in the past, Indiana had facilities-based wireless ETCs that were required to report due to the fact that they received support for serving rural service areas.¹⁷ Those companies have since relinquished their ETC certifications. Indiana also has facilities-based competitive local exchange carriers (“CLECs”) that receive Interstate Access Support; however they have not been subject to the above reporting requirement. In addition, Lifeline-only ETCs have not been required to file this report in order comply with 47 C.F.R. 54.314; however, the Indiana Commission has implemented state specific reporting requirements for Lifeline only ETCs. Moreover, the first Indiana Lifeline-only ETC was certificated on November 10, 2010.

The Indiana Commission has found that ETCs designated to receive high cost support have been highly motivated to comply with the annual reporting requirements by timely filing completed forms and reports. The potential loss of universal service support, even on a prospective basis, represents a substantial loss to the ETCs. Existing ETCs that receive high cost support in Indiana also have a long history of serving their designated service areas and have an understanding of their regulatory compliance obligations as an ETC.

The Indiana Commission understands that the Order extends federal annual reporting requirements from ETCs designated by the FCC to all ETCs, including those designated by states. This information includes the data required in the current 47 C.F.R. §54.209 (a)(1) through (a)(6). Beginning in 2013, ETCs must report on compliance with their public interest obligations associated with the CAF ICC reforms of the Order, which require ETCs to build broadband and voice capable networks.

ETCs will be required to report the results of network performance tests, certify that usage capacity limits (if any) for services that are subject to the broadband public interest standard are reasonably comparable to usage capacity limits for comparable terrestrial residential fixed broadband offerings in urban areas, and report deployment milestones.

¹⁶ The Indiana Commission applies this to companies that receive high cost loop, local switching, safety valve and safety net additive support. Indiana is not a high cost model state.

¹⁷ Currently, Indiana has no facilities-based wireless ETCs that receive high cost support.

In order to strengthen accountability on the part of companies that receive high cost support, the FNPRM proposes various remedies or penalties available to the FCC when ETCs do not meet certain milestones, such as financial guarantees in the form of a irrevocable standby letter of credit or penalties in the form of loss of ETC status or denial of certification.¹⁸ The FNPRM asks if penalties should include loss of prospective support or recovery of past support amounts.¹⁹

The Indiana Commission recommends that denial of certification for funding in the upcoming year should be the standard penalty for failure to meet ETC accountability standards and reporting requirements as is the case today. More extreme penalties should be reserved for companies that commit fraud or intentionally misuse public funds. The requirements should have flexibility to take into account extreme weather events or natural disasters that may delay achieving milestones in an ETC's five-year plan. In order to achieve the goals of providing voice and broadband capable networks to the hardest-to-serve areas of the country, we need to allow ETCs the flexibility to revise business plans when circumstances call for it. Recovery of past support for failure to meet certain broadband build out milestones, network performance, or capacity requirements could be overly burdensome for ETCs that already have an established record and investment in a given area. Regulators should have flexibility to distinguish between ETCs that commit fraud or are recalcitrant in their reporting requirements as opposed to ETCs that put forth a good faith effort to comply with the spirit and intent of the program yet miss certain milestones due to hardships or unforeseen circumstances.

The Indiana Commission also advises extreme caution in requiring an irrevocable standby letter of credit. Actions included in the Commission's order could significantly reduce revenue for most Indiana RLECs. Imposing an irrevocable standby letter of credit could place further financial strain on already stressed companies. The goal should be to maintain providers, not eliminate them.

VI. Conclusion

As discussed, the Indiana Commission recommends that:

- Data should be collected and analyzed prior to establishing comparable rates and service levels for broadband service.
- A state commission review must occur prior to elimination of support for geographic areas with an unsubsidized competitor.
- In adjusting ETC service obligations, standards for voice telephony should not be relaxed beyond the more flexible standards contained in the Order.

¹⁸ *Id.* at *1342, 1345-1348, ¶¶ 1105, 1110-1111.

¹⁹ *Id.*

- Remedies and penalties should be used to ensure accountability of recipients of USF support, but must be used prudently and only for true violations, not inadvertent or incidental lapses or those caused by hardships or unforeseen circumstances.

The Indiana Commission respectfully requests that the FCC consider and apply the recommendations expressed in these Comments. The Indiana Commission looks forward to continuing the coordinated state-federal partnership with the FCC on USF/ICC issues.

Respectfully submitted this 18th day of January, 2012

INDIANA UTILITY REGULATORY COMMISSION



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